

ASSEMBLY BILL

No. 1445

Introduced by Assembly Member Logue

January 6, 2014

An act to repeal and add Division 26.7 (commencing with Section 79700) of the Water Code, and to repeal Section 2 of Chapter 3 of the Seventh Extraordinary Session of the Statutes of 2009, relating to a public benefits associated with water storage projects program, by providing the funds necessary therefor through an election for the issuance and sale of bonds of the State of California, and for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1445, as introduced, Logue. California Water Infrastructure Act of 2014.

(1) Existing law creates the Safe, Clean, and Reliable Drinking Water Supply Act of 2012, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$11,140,000,000 pursuant to the State General Obligation Bond Law to finance a safe drinking water and water supply reliability program. Existing law provides for the submission of the bond act to the voters at the November 4, 2014, statewide general election.

This bill would repeal these provisions.

(2) Under existing law, various measures have been approved by the voters to provide funds for water supply and protection facilities and programs.

This bill would enact the California Water Infrastructure Act of 2014, which, if adopted by the voters, would authorize the issuance of bonds

in the amount of \$5,800,000,000 pursuant to the State General Obligation Bond Law to finance a public benefits associated with water storage projects program.

This bill would provide for the submission of this bond act to the voters at the November 4, 2014, statewide general election.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Division 26.7 (commencing with Section 79700) of the Water Code, as added by Section 1 of Chapter 3 of the Seventh Extraordinary Session of the Statutes of 2009, is repealed.
SEC. 2. Division 26.7 (commencing with Section 79700) is added to the Water Code, to read:

DIVISION 26.7. THE CALIFORNIA WATER
INFRASTRUCTURE ACT OF 2014

CHAPTER 1. SHORT TITLE

79700. This division shall be known, and may be cited, as the California Water Infrastructure Act of 2014.

CHAPTER 2. DEFINITIONS

79702. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this division, as follows:

(a) "CALFED Bay-Delta Program" means the program described in the Record of Decision dated August 28, 2000.

(b) "Commission" means the California Water Commission.

(c) "Committee" means the California Water Infrastructure Finance Committee created by Section 79812.

(d) "Delta" means the Sacramento-San Joaquin Delta, as defined in Section 12220.

(e) "Delta conveyance facilities" means facilities that convey water directly from the Sacramento River to the State Water Project

1 or the federal Central Valley Project pumping facilities in the south
2 Delta.

3 (f) “Department” means the Department of Water Resources.

4 (g) “Director” means the Director of Water Resources.

5 (h) “Fund” means the California Water Infrastructure Fund of
6 2014 created by Section 79716.

7 (i) “Nonprofit organization” means an organization qualified
8 to do business in California and qualified under Section 501(c)(3)
9 of Title 26 of the United States Code.

10 (j) “Public agency” means a state agency or department, district,
11 joint powers authority, city, county, city and county, or other
12 political subdivision of the state.

13 (k) “Secretary” means the Secretary of the Natural Resources
14 Agency.

15 (l) “State General Obligation Bond Law” means the State
16 General Obligation Bond Law (Chapter 4 (commencing with
17 Section 16720) of Part 3 of Division 4 of Title 2 of the Government
18 Code).

19
20 CHAPTER 3. GENERAL PROVISIONS
21

22 79705. An amount that equals not more than 5 percent of the
23 funds allocated for a grant program pursuant to this division may
24 be used to pay the administrative costs of that program.

25 79706. Up to 10 percent of funds allocated for each program
26 funded by this division may be expended for planning and
27 monitoring necessary for the successful design, selection, and
28 implementation of the projects authorized under that program.
29 This section shall not otherwise restrict funds ordinarily used by
30 an agency for “preliminary plans,” “working drawings,” and
31 “construction” as defined in the annual Budget Act for a capital
32 outlay project or grant project. Water quality monitoring shall be
33 integrated into the surface water ambient monitoring program
34 administered by the State Water Resources Control Board.

35 79709. It is the intent of the people that the investment of public
36 funds pursuant to this division will result in public benefits.

37 79710. The California State Auditor shall annually conduct a
38 programmatic review and an audit of expenditures from the fund.
39 The California State Auditor shall report its findings annually on

1 or before March 1 to the Governor and the Legislature, and shall
2 make the findings available to the public.

3 79711. Funds provided by this division shall not be expended
4 to support or pay for the costs of environmental mitigation
5 measures or compliance obligations of any party except as part of
6 the environmental mitigation costs of projects financed by this
7 division. Funds provided by this division may be used for
8 environmental enhancements or other public benefits.

9 79712. Funds provided by this division shall not be expended
10 to pay the costs of the design, construction, operation, or
11 maintenance of Delta conveyance facilities. Those costs shall be
12 the responsibility of the water agencies that benefit from the design,
13 construction, operation, or maintenance of those facilities.

14 79713. (a) This division does not diminish, impair, or
15 otherwise affect in any manner whatsoever any area of origin,
16 watershed of origin, county of origin, or any other water rights
17 protections, including, but not limited to, rights to water
18 appropriated prior to December 19, 1914, provided under the law.
19 This division does not limit or otherwise affect the application of
20 Article 1.7 (commencing with Section 1215) of Chapter 1 of Part
21 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461,
22 11462, and 11463, and Sections 12200 to 12220, inclusive.

23 (b) For purposes of this division, an area that utilizes water that
24 has been diverted and conveyed from the Sacramento River
25 hydrologic region, for use outside the Sacramento River hydrologic
26 region or the Delta, shall not be deemed to be immediately adjacent
27 thereto or capable of being conveniently supplied with water
28 therefrom by virtue or on account of the diversion and conveyance
29 of that water through facilities that may be constructed for that
30 purpose after January 1, 2015.

31 (c) Nothing in this division supersedes, limits, or otherwise
32 modifies the applicability of Chapter 10 (commencing with Section
33 1700) of Part 2 of Division 2, including petitions related to any
34 new conveyance constructed or operated in accordance with
35 Chapter 2 (commencing with Section 85320) of Part 4 of Division
36 35.

37 (d) Unless otherwise expressly provided, nothing in this division
38 supersedes, reduces, or otherwise affects existing legal protections,
39 both procedural and substantive, relating to the state board's
40 regulation of diversion and use of water, including, but not limited

1 to, water right priorities, the protection provided to municipal
2 interests by Sections 106 and 106.5, and changes in water rights.
3 Nothing in this division expands or otherwise alters the state
4 board's existing authority to regulate the diversion and use of water
5 or the courts' existing concurrent jurisdiction over California water
6 rights.

7 79714. Eligible applicants under this division are public
8 agencies, nonprofit organizations, public utilities, and mutual water
9 companies. To be eligible for funding under this division, a project
10 proposed by a public utility that is regulated by the Public Utilities
11 Commission or a mutual water company shall have a clear and
12 definite public purpose and shall benefit the customers of the water
13 system.

14 79716. The proceeds of bonds issued and sold pursuant to this
15 division shall be deposited in the California Water Infrastructure
16 Fund of 2014, which is hereby created in the State Treasury.

17
18 CHAPTER 4. CALIFORNIA WATER INFRASTRUCTURE
19

20 79740. (a) Notwithstanding Section 162, the commission may
21 make the determinations, findings, and recommendations required
22 of it by this chapter independent of the views of the director. All
23 final actions by the commission in implementing this chapter shall
24 be taken by a majority of the members of the commission at a
25 public meeting noticed and held pursuant to the Bagley-Keene
26 Open Meeting Act (Article 9 (commencing with Section 11120)
27 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
28 Code).

29 (b) Notwithstanding Section 13340 of the Government Code,
30 the sum of five billion eight hundred million dollars
31 (\$5,800,000,000) is hereby continuously appropriated from the
32 fund, without regard to fiscal years, to the commission for public
33 benefits associated with water storage projects that improve the
34 operation of the state water system, are cost effective, and provide
35 a net improvement in ecosystem and water quality conditions, in
36 accordance with this chapter. Funds authorized for, or made
37 available to, the commission pursuant to this chapter shall be
38 available and expended only for the purposes provided in this
39 chapter, and shall not be subject to appropriation or transfer by the
40 Legislature or the Governor for any other purpose.

1 (c) Projects shall be selected by the commission through a
2 competitive public process that ranks potential projects based on
3 the expected return for public investment as measured by the
4 magnitude of the public benefits provided, pursuant to criteria
5 established under this chapter.

6 (d) Any project constructed with funds provided by this chapter
7 shall be subject to Section 11590.

8 79741. Projects for which the public benefits are eligible for
9 funding under this chapter consist of only the following:

10 (a) Surface storage projects identified in the CALFED Bay-Delta
11 Program Record of Decision, dated August 28, 2000, except for
12 projects prohibited by Chapter 1.4 (commencing with Section
13 5093.50) of Division 5 of the Public Resources Code.

14 (b) Groundwater storage projects and groundwater
15 contamination prevention or remediation projects that provide
16 water storage benefits.

17 (c) Conjunctive use and reservoir reoperation projects.

18 (d) Local and regional surface storage projects that improve the
19 operation of water systems in the state and provide public benefits.

20 79742. A project shall not be funded pursuant to this chapter
21 unless it provides measurable improvements to the Delta ecosystem
22 or to the tributaries to the Delta.

23 79743. (a) Funds allocated pursuant to this chapter may be
24 expended solely for the following public benefits associated with
25 water storage projects:

26 (1) Ecosystem improvements, including changing the timing of
27 water diversions, improvement in flow conditions, temperature,
28 or other benefits that contribute to restoration of aquatic ecosystems
29 and native fish and wildlife, including those ecosystems and fish
30 and wildlife in the Delta.

31 (2) Water quality improvements in the Delta, or in other river
32 systems, that provide significant public trust resources, or that
33 clean up and restore groundwater resources.

34 (3) Flood control benefits, including, but not limited to, increases
35 in flood reservation space in existing reservoirs by exchange for
36 existing or increased water storage capacity in response to the
37 effects of changing hydrology and decreasing snow pack on
38 California's water and flood management system.

1 (4) Emergency response, including, but not limited to, securing
2 emergency water supplies and flows for dilution and salinity
3 repulsion following a natural disaster or act of terrorism.

4 (5) Recreational purposes, including, but not limited to, those
5 recreational pursuits generally associated with the outdoors.

6 (b) Funds shall not be expended pursuant to this chapter for the
7 costs of environmental mitigation measures or compliance
8 obligations except for those associated with providing the public
9 benefits as described in this section.

10 79744. In consultation with the Department of Fish and
11 Wildlife, the State Water Resources Control Board, and the
12 department, the commission shall develop and adopt, by regulation,
13 methods for quantification and management of public benefits
14 described in Section 79743 by December 15, 2016. The regulations
15 shall include the priorities and relative environmental value of
16 ecosystem benefits as provided by the Department of Fish and
17 Wildlife and the priorities and relative environmental value of
18 water quality benefits as provided by the State Water Resources
19 Control Board.

20 79745. (a) Except as provided in subdivision (c), no funds
21 allocated pursuant to this chapter may be allocated for a project
22 before December 15, 2016, and until the commission approves the
23 project based on the commission's determination that all of the
24 following have occurred:

25 (1) The commission has adopted the regulations specified in
26 Section 79744 and specifically quantified and made public the cost
27 of the public benefits associated with the project.

28 (2) The department has entered into a contract with each party
29 that will derive benefits, other than public benefits, as defined in
30 Section 79743, from the project that ensures the party will pay its
31 share of the total costs of the project. The benefits available to a
32 party shall be consistent with that party's share of total project
33 costs.

34 (3) The department has entered into a contract with each public
35 agency identified in Section 79744 that administers the public
36 benefits, after that agency makes a finding that the public benefits
37 of the project for which that agency is responsible meet all the
38 requirements of this chapter, to ensure that the public contribution
39 of funds pursuant to this chapter achieves the public benefits
40 identified for the project.

(4) The commission has held a public hearing for the purposes of providing an opportunity for the public to review and comment on the information required to be prepared pursuant to this subdivision.

(5) All of the following additional conditions are met:

(A) Feasibility studies have been completed.

(B) The commission has found and determined that the project is feasible, is consistent with all applicable laws and regulations, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(C) All environmental documentation associated with the project has been completed, and all other federal, state, and local approvals, certifications, and agreements required to be completed have been obtained.

(b) The commission shall submit to the Legislature its findings for each of the criteria identified in subdivision (a) for a project funded pursuant to this chapter.

(c) Notwithstanding subdivision (a), funds may be made available under this chapter for the completion of environmental documentation and permitting of a project.

79746. (a) The public benefit cost share of a project funded pursuant to this chapter, other than a project described in subdivision (c) of Section 79741, may not exceed 50 percent of the total costs of any project funded under this chapter.

(b) A project shall not be funded unless it provides ecosystem improvements as described in paragraph (1) of subdivision (a) of Section 79743 that are at least 50 percent of total public benefits of the project funded under this chapter.

79747. (a) A project is not eligible for funding under this chapter unless, by January 1, 2022, all of the following conditions are met:

(1) All feasibility studies are complete and draft environmental documentation is available for public review.

(2) The commission makes a finding that the project is feasible, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(3) The director receives commitments for not less than 75 percent of the nonpublic benefit cost share of the project.

1 (b) If compliance with subdivision (a) is delayed by litigation
2 or failure to promulgate regulations, the date in subdivision (a)
3 shall be extended by the commission for a time period that is equal
4 to the time period of the delay, and funding under this chapter that
5 has been dedicated to the project shall be encumbered until the
6 time at which the litigation is completed or the regulations have
7 been promulgated.

8 79748. Surface storage projects funded pursuant to this chapter
9 and described in subdivision (a) of Section 79741 may be made a
10 unit of the Central Valley Project as provided in Section 11290
11 and may be financed, acquired, constructed, operated, and
12 maintained pursuant to Part 3 (commencing with Section 11100)
13 of Division 6.

14 79749. (a) The funds allocated for the design, acquisition, and
15 construction of surface storage projects identified in the CALFED
16 Bay-Delta Record of Decision, dated August 28, 2000, pursuant
17 to this chapter may be provided for those purposes to local joint
18 powers authorities formed by irrigation districts and other local
19 water districts and local governments within the applicable
20 hydrologic region to design, acquire, and construct those projects.

21 (b) The joint powers authorities described in subdivision (a)
22 may include in their membership governmental partners that are
23 not located within their respective hydrologic regions in financing
24 the surface storage projects, including, as appropriate, cost-share
25 participation or equity participation. Notwithstanding Section 6525
26 of the Government Code, the joint powers authorities described
27 in subdivision (a) shall not include in their membership any
28 for-profit corporation, or any mutual water company whose
29 shareholders and members include a for-profit corporation or any
30 other private entity. The department shall be an ex officio member
31 of each joint powers authority subject to this section, but the
32 department shall not control the governance, management, or
33 operation of the surface water storage projects.

34 (c) A joint powers authority subject to this section shall own,
35 govern, manage, and operate a surface water storage project,
36 subject to the requirement that the ownership, governance,
37 management, and operation of the surface water storage project
38 shall advance the purposes set forth in this chapter.

39 79749.5. (a) In approving the California Water Infrastructure
40 Act of 2014, the people were informed and hereby declare that the

1 provisions of this chapter are necessary, integral, and essential to
2 meeting the single object or work of the California Water
3 Infrastructure Act of 2014. As such, any amendment of the
4 provisions of this chapter by the Legislature without voter approval
5 would frustrate the scheme and design that induced voter approval
6 of this act. The people therefore find and declare that any
7 amendment of the provisions of this chapter by the Legislature
8 shall require an affirmative vote of two-thirds of the membership
9 in each house of the Legislature and voter approval.

10 (b) This section shall not govern or be used as authority for
11 determining whether the amendment of any other provision of this
12 act not contained in this chapter would constitute a substantial
13 change in the scheme and design of this act requiring voter
14 approval.

15
16 CHAPTER 5. FISCAL PROVISIONS
17

18 79810. (a) Bonds in the total amount of five billion eight
19 hundred million dollars (\$5,800,000,000), not including the amount
20 of any refunding bonds issued in accordance with Section 79822,
21 or so much thereof as is necessary, may be issued and sold to
22 provide a fund to be used for carrying out the purposes expressed
23 in this division and to reimburse the General Obligation Bond
24 Expense Revolving Fund pursuant to Section 16724.5 of the
25 Government Code. The bonds, when sold, shall be and constitute
26 valid and binding obligations of the State of California, and the
27 full faith and credit of the State of California is hereby pledged
28 for the punctual payment of both the principal of, and interest on,
29 the bonds as the principal and interest become due and payable.

30 (b) The Treasurer shall sell the bonds authorized by the
31 committee pursuant to this section. The bonds shall be sold upon
32 the terms and conditions specified in a resolution to be adopted
33 by the committee pursuant to Section 16731 of the Government
34 Code.

35 79811. The bonds authorized by this division shall be prepared,
36 executed, issued, sold, paid, and redeemed as provided in the State
37 General Obligation Bond Law, and all of the provisions of that
38 law apply to the bonds and to this division and are hereby
39 incorporated in this division as though set forth in full in this
40 division, except that Section 16727 of the Government Code shall

1 not apply to the extent that it is inconsistent with any other
2 provision of this division.

3 79812. (a) Solely for the purpose of authorizing the issuance
4 and sale, pursuant to the State General Obligation Bond Law, of
5 the bonds authorized by this division, the California Water
6 Infrastructure Committee is hereby created. For purposes of this
7 division, the California Water Infrastructure Committee is “the
8 committee” as that term is used in the State General Obligation
9 Bond Law.

10 (b) The committee consists of the Director of Finance, the
11 Treasurer, the Controller, the Director of Water Resources, and
12 the Secretary of the Natural Resources Agency. Notwithstanding
13 any other law, any member may designate a deputy to act as that
14 member in his or her place for all purposes, as though the member
15 were personally present.

16 (c) The Treasurer shall serve as chairperson of the committee.

17 (d) A majority of the members of the committee shall constitute
18 a quorum of the committee, and may act for the committee.

19 79813. The committee shall determine whether or not it is
20 necessary or desirable to issue bonds authorized pursuant to this
21 division to carry out the actions specified in this division and, if
22 so, the amount of bonds to be issued and sold. Successive issues
23 of bonds may be authorized and sold to carry out those actions
24 progressively, and it is not necessary that all of the bonds
25 authorized to be issued be sold at any one time.

26 79814. “Board,” as defined in Section 16722 of the Government
27 Code for the purposes of compliance with the State General
28 Obligation Bond Law, means the department.

29 79815. There shall be collected each year and in the same
30 manner and at the same time as other state revenue is collected,
31 in addition to the ordinary revenues of the state, a sum in an amount
32 required to pay the principal of, and interest on, the bonds each
33 year, and it is the duty of all officers charged by law with any duty
34 in regard to the collection of the revenue to do and perform each
35 and every act that is necessary to collect that additional sum.

36 79816. Notwithstanding Section 13340 of the Government
37 Code, there is hereby appropriated from the General Fund in the
38 State Treasury, for the purposes of this division, an amount that
39 will equal the total of the following:

1 (a) The sum annually necessary to pay the principal of, and
2 interest on, bonds issued and sold pursuant to this division, as the
3 principal and interest become due and payable.

4 (b) The sum that is necessary to carry out the provisions of
5 Section 79819, appropriated without regard to fiscal years.

6 79817. The board may request the Pooled Money Investment
7 Board to make a loan from the Pooled Money Investment Account
8 in accordance with Section 16312 of the Government Code for the
9 purpose of carrying out this division. The amount of the request
10 shall not exceed the amount of the unsold bonds that the committee
11 has, by resolution, authorized to be sold for the purpose of carrying
12 out this division. The board shall execute those documents required
13 by the Pooled Money Investment Board to obtain and repay the
14 loan. Any amounts loaned shall be deposited in the fund to be
15 allocated in accordance with this division.

16 79818. Notwithstanding any other provision of this division,
17 or of the State General Obligation Bond Law, if the Treasurer sells
18 bonds that include a bond counsel opinion to the effect that the
19 interest on the bonds is excluded from gross income for federal
20 tax purposes under designated conditions, the Treasurer may
21 maintain separate accounts for the bond proceeds invested and for
22 the investment earnings on those proceeds, and may use or direct
23 the use of those proceeds or earnings to pay any rebate, penalty,
24 or other payment required under federal law or take any other
25 action with respect to the investment and use of those bond
26 proceeds, as may be required or desirable under federal law in
27 order to maintain the tax-exempt status of those bonds and to obtain
28 any other advantage under federal law on behalf of the funds of
29 this state.

30 79819. For purposes of carrying out this division, the Director
31 of Finance may authorize the withdrawal from the General Fund
32 of an amount or amounts not to exceed the amount of the unsold
33 bonds that have been authorized by the committee to be sold for
34 the purpose of carrying out this division. Any amounts withdrawn
35 shall be deposited in the fund. Any money made available under
36 this section shall be returned to the General Fund, with interest at
37 the rate earned by the money in the Pooled Money Investment
38 Account, from proceeds received from the sale of bonds for the
39 purpose of carrying out this division.

1 79820. All money deposited in the fund that is derived from
2 premiums and accrued interest on bonds sold pursuant to this
3 division shall be reserved in the fund and shall be available for
4 transfer to the General Fund as a credit to expenditures for bond
5 interest.

6 79821. Pursuant to Chapter 4 (commencing with Section
7 16720) of Part 3 of Division 4 of Title 2 of the Government Code,
8 the cost of bond issuance shall be paid out of the bond proceeds.
9 These costs shall be shared proportionately by each program funded
10 through this division.

11 79822. The bonds issued and sold pursuant to this division
12 may be refunded in accordance with Article 6 (commencing with
13 Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of
14 the Government Code, which is a part of the State General
15 Obligation Bond Law. Approval by the electors of the state for the
16 issuance of the bonds under this division shall include approval
17 of the issuance of any bonds issued to refund any bonds originally
18 issued under this division or any previously issued refunding bonds.

19 79823. The proceeds from the sale of bonds authorized by this
20 division are not “proceeds of taxes” as that term is used in Article
21 XIII B of the California Constitution, and the disbursement of
22 these proceeds is not subject to the limitations imposed by that
23 article.

24 79824. Of the five billion eight hundred million dollars
25 (\$5,800,000,000) in bonds authorized in this division, no more
26 than two billion nine hundred million dollars (\$2,900,000,000)
27 shall be sold by the Treasurer before July 1, 2019.

28 SEC. 3. Section 2 of Chapter 3 of the Seventh Extraordinary
29 Session, of the Statutes of 2009, as amended by Section 1 of
30 Chapter 74 of the Statutes of 2012, is repealed.

31 ~~Sec. 2. Section 1 of this act shall be submitted to the voters at~~
32 ~~the November 4, 2014, statewide general election, instead of the~~
33 ~~November 6, 2012, statewide general election, in accordance with~~
34 ~~provisions of the Government Code and the Elections Code~~
35 ~~governing the submission of a statewide measure to the voters.~~

36 SEC. 4. Section 2 of this act shall be submitted to the voters
37 at the November 4, 2014, statewide general election in accordance
38 with provisions of the Government Code and the Elections Code
39 governing the submission of a statewide measure to the voters.

1 SEC. 5. Section 2 of this act shall take effect upon the approval
2 by the voters of the California Water Infrastructure Act of 2014
3 as set forth in that section at the November 4, 2014, statewide
4 general election.

5 SEC. 6. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to ensure that the Safe, Clean, and Reliable Drinking
10 Water Supply Act of 2012 is removed from the November 4, 2014,
11 statewide general election, and to ensure that the California Water
12 Infrastructure Act of 2014 is placed on the November 4, 2014,
13 statewide general election, it is necessary that this act take effect
14 immediately.